Ocean State Jobbers, Inc., d/b/a Ocean State Job Lot and United Food *and* Commerical Workers International Union, Local 328.[1] Case 1–CA–42065

November 30, 2005

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

On August 30, 2005, Administrative Law Judge David L. Evans issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief and a brief in support of the judge's decision, and the Respondent filed a reply brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions[2] and briefs and has decided to affirm the judge's rulings, findings[3] and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Ocean State Jobbers, Inc., d/b/a Ocean State Job Lot, North Kingston, Rhode Island, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Dated, Washington, D.C. November 30, 2005

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Crista Elzeneiny, Esq., for the General Counsel.
Joseph D. Whelan, Esq., of Providence, Rhode Island, for the Respondent.
Alfred Gordon, Esq., of Boston, Massachusetts, for the Charging Party.

DECISION

STATEMENT OF THE CASE

DAVID L. EVANS, Administrative Law Judge. This case under the National Labor Relations Act (the Act) was tried before me in Pawtucket and Providence, Rhode Island, on May 2–4, 2005. On September 9, 2004,[1] United Food and Commercial Workers International Union, Local 328, AFL–CIO, filed the charge in Case 1–CA–42065 alleging that Ocean State Jobbers, Inc., d/b/a Ocean State Job Lot (the Respondent), had committed various violations of the Act. On February 28, 2005, after administrative investigation of the charges, the General Counsel of the National Labor Relations Board (the Board) issued a complaint alleging that, on August 16, the Respondent violated Section 8(a)(3) and (1) of the Act by suspending employees Elio Padilla, Juan Saravia, and Hector Pacheco because of their activities on behalf of the Union. (As discussed infra, the employee whom the complaint names as "Hector Pacheco" identified himself at trial as "Edgar Anez"; as this individual testified under oath that Edgar Anez is his true name, he will be referred to as such hereafter, except when the evidence requires the use of "Pacheco" to refer to him.) The complaint, as originally issued, further alleged that the Respondent violated Section 8(a)(1) by an agent's telling employees that they had just been suspended because they had engaged in union activities. And the original complaint further alleged that, on September 22, the Respondent violated Section 8(a)(3) and (1) by discharging Padilla, Anez, and Saravia because of their union activities. The Respondent duly filed an answer to the complaint admitting that this matter is properly before the Board but denying the commission of any unfair labor practices. At trial, over the objection of the Respondent, I granted a motion by the General Counsel to amend the complaint also to allege that the Respon-

[1] We have amended the caption to reflect the disaffiliation of the United Food and Commercial Workers International Union from the AFL–CIO effective July 29, 2005.

[2] No exceptions were filed to the judge's dismissal of 8(a)(1) allegations that the Respondent's director of logistics, Richard Giordano, threatened employees with closure of the warehouse if they selected the Union as their bargaining representative, and that alleged agent, Rodolfo Gamez, told the three discriminatees herein that they had been suspended for engaging in union activity.

[3] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In adopting the judge's finding that the Respondent violated Sec. 8(a)(3) and (1) by discharging Elio Padilla, Edgar Anez, and Juan Saravia, we do not rely on his statement that "[c]hanging one's social security number is not an easy, or a quick thing to do; changing one's name is even harder." There is no record evidence to support this statement. We also do not rely on fn. 19 of the judge's decision. Contrary to the finding therein, the Respondent did contend that five of the other names on Giordano's nine-name list had invalid I-9 information in the form of nonmatching social security numbers.

[1] All dates mentioned are in 2004, unless otherwise indicated.

dent, by one of its supervisors, once threatened its employees with plant closure and job losses if they selected the Union as their collective-bargaining representative.

Upon the testimony and exhibits entered at trial,[2] and after consideration of the briefs that have been filed, I enter the following findings of fact and conclusions of law.

Jurisdiction and Labor Organizations' Status

As it admits, the Respondent is a corporation that has an office and warehouse in North Kingston, Rhode Island, from which it is engaged in the business of retail sales at various locations within Rhode Island and Massachusetts. In the conduct of those business operations, the Respondent annually derives gross revenues in excess of $500,000 and purchases and receives at the North Kingston facility goods valued in excess of $50,000 directly from suppliers located at points outside Rhode Island. I therefore find and conclude that at all material times the Respondent has been an employer that is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. As the parties stipulated at trial, at all material times the Union has been a labor organization within the meaning of Section 2(5) of the Act.

Background

The Respondent employs about 2800 employees, about 160 of whom work on three shifts at its warehouse. Many of the warehouse employees, including the alleged discriminatees, are from Bolivia and speak only Spanish. Before being suspended, the alleged discriminatees worked on the Respondent's second shift at the warehouse.

On May 22, 2003, the Social Security Administration sent to the Respondent a "No-Match letter." In the letter, under the topic-line "Why are you getting this letter [?]," is stated:

> Some employee names and Social Security numbers that you reported on the Wage and Tax Statements (Forms W-2) for tax year 2002 do not agree with our records. We need corrected information from you so that we can credit your employees' earnings to their Social Security record[s]. It's important because these records can determine if someone is entitled to Social Security retirement, disability and survivors['] benefit[s], and how much he or she can receive. If the information you reported to us is incorrect, your employee may not get the benefits he or she is due.

Under "IMPORTANT" (which word is in capital letters and in boldfaced type) is:

> This letter does not imply that you or your employee intentionally gave the government wrong information about the employee's name or Social Security number. Nor does it make any statement about an employee's immigration status.
>
> You should not use this letter to take any adverse action against an employee just because his or her Social Security number appears on the list, such as laying off, suspending, firing, or discriminating against that individual. Doing so could, in fact, violate state or federal law and subject you to legal consequences.

Under the heading "What You Should Do," The Social Security Administration's 2003 letter states:

> It would be a great help to us if you could respond within 60 days with the information that you are able to correct so that the Social Security Administration can maintain an accurate earnings records for each employee and make sure your employees get the benefits they are due.

The letter recites that a list of nonmatching social security numbers is attached, and it closes with instructions the employer can follow to make corrections. The attachment has 185 social security numbers. The Respondent took no action on the 2003 No-Match letter, but the Social Security Administration took no action against it or any of its employees as a result.

On April 22, 2004, the Social Security Administration sent the Respondent a second No-Match letter, the text of which is identical to that of the 2003 letter. The 2004 No-Match letter attached a list of 156 social security numbers, 92 of which had appeared on the 2003 No-Match list.[3] As discussed infra, of the 156 numbers on the 2004 list had been specified by current warehouse employees on their W-4 forms. Two of those 85 numbers were those that had been specified by alleged discriminatees Anez and Padilla. The social security number that alleged discriminatee Saravia had specified on his W-4 form was not on the 2004 No-Match list (or on the 2003 No-Match list).

[2] Certain passages of the transcript have been electronically reproduced; some corrections to punctuation have been entered. Where I quote a witness who restarts an answer, *and that restarting is meaningless,* I sometimes eliminate without ellipses words that have become extraneous; e.g., "Doe said, I mean, he asked . . ." becomes "Doe asked . . ." Capitalization in quoted documents is original (e.g., "Social Security number"). All bracketed entries have been made by me.

[3] Although no exhibit separately displays which of the 2003 numbers the Social Security Administration repeated in 2004, review of the two lists disclose that they are these: 337–96–5687; 046–25–7632; 247–65–3970; 036–24–3846; 037–90–6653; 654–79–8657; 601–43–8672; 039–53–5076; 037–62–5058; 036–29–1673; 534–98–8768; 563–42–8765; 036–65–3270; 147–88–9446; 039–45–6879; 442–23–1027; 037–60–1866; 542–09–7550; 089–58–7186; 012–07–9022; 089–46–0927; 059–11–7568; 036–25–2653; 611–87–0913; 036–70–6114; 032–24–8740; 059–32–7880; 657–98–4463; 038–41–7839; 034–22–7312; 034–30–1409; 036–67–7856; 037–45–9062; 091–83–9092; 035–43–4509; 038–76–4021; 176–43–2786; 017–67–8645; 541–41–4988; 035–78–2352; 546–56–4768; 645–90–5676; 292–98–3478; 048–76–5336; 059–80–3279; 404–05–8130; 646–88–7755; 042–11–6633; 037–65–9382; 037–65–3352; 605–34–8891; 038–36–2264; 026–39–1495; 034–51–1590; 241–66–5431; 630–11–8929; 205–86–9529; 035–02–5521; 034–55–0101; 582–02–1228; 039–76–5037; 016–45–0162; 058–35–7497; 632–10–1141; 033–12–6056; 034–98–6791; 031–70–6628; 042–85–7452; 623–21–2911; 631–06–8472; 032–48–9354; 576–34–4780; 036–58–4725; 039–60–4491; 676–20–9501; 036–42–3714; 632–86–6147; 037–88–4598; 038–75–8620; 035–64–8792; 036–60–3182; 035–02–0536; 601–69–4522; 045–96–9274; 390–78–4821; 225–76–8942; 034–07–4512; 034–23–6473; 036–17–8360; 642–98–0923; 046–48–1842; and 029–60–6029.

Raymond Conforti, the Respondent's director of human resources, identified two letters that the Respondent sent to the employees whose social security numbers had appeared on the 2004 No-Match list. The first letter is undated, but Conforti testified that he sent it in May 2004. The May letter states:

> Ocean State Job Lot has been requested to update its personnel files for some of its employees. You are one of the employees who's [sic] file is being updated. To ensure the accuracy of our personnel file we are requesting that you provide us the following information:

Then the letter has blanks for full name, "current" social security number, current telephone number, and emergency contact. The letter concludes: "After filling the requested information, please return the form to the Human Resources Department by May 26, 2004."

On June 2, Conforti sent another letter to the employees whose numbers had been listed on the 2004 No-Match letter. Each copy of the letter stated that the Social Security Administration had notified the Respondent that some of the employees' social security numbers "may be wrong," that the Respondent was attaching a copy of the W-4 form that the employee had previously executed, and that: "You have until June 16, 2004 to correct this situation with the Social Security Administration." In boldfaced type, the letter further states:

> **We have no plans to terminate any individual because of this issue. This is between you and the Social Security Administration.**

The employee is thereafter told that he or she may take an unpaid "day or two off to hopefully resolve this issue with Social Security."

Facts in Dispute

As detailed below, Richard Giordano, the Respondent's director of logistics, testified that he, alone, made the decision to suspend the alleged discriminatees. Anez, who, again, testified that his real name is, in fact, "Edgar Anez,"[4] testified that, in June, Giordano and Supervisor Alf Reid called a meeting of some of the second-shift employees. Giordano distributed copies of the June 2 letter, copies of the W-4 forms that the gathered employees had previously submitted, and blank W-4 forms. Through a translator, Giordano told the gathered employees that there was a problem because their social security numbers did not match. Giordano told the employees not to be frightened and to look over their previously submitted W-4 forms and make any needed corrections on a new one. Anez testified that, at some unspecified time later, he approached Giordano in his office. According to Anez, Giordano told him "[t]o change one or two digits of the social security number. . . . He saw that as the solution." On June 14, Anez submitted a new W-4 form as "Hector Pacheco." On the form, Anez also specified a new social security number.[5]

The organizational attempt and the alleged threat by Giordano

Union Representative Carlos Gonzalez testified that union organizers held some meetings and made some home visits with first-shift employees in May, but the Union did not contact any second-shift employees until later. Gonzalez testified that in mid-July Padilla, Anez and Saravia signed union authorization cards. (Those cards were produced by the Union during Gonzalez' cross-examination, but were not placed in evidence.) Gonzalez testified that Padilla, Anez, and Saravia also supplied him with names and addresses of other second-shift employees who could be visited, and sometimes Padilla, Anez, or Saravia, or two of those three, would accompany him on visits to homes of other second-shift employees. Padilla, Anez, and Saravia testified consistently with Gonzalez on these points.

The Respondent conducts Friday production meetings for each warehouse shift. Overall supervisor of the warehouse, David Reardon, and Warehouse Area Supervisors Alfonso Reid and Dawn Strong, were usually present at those meetings. Giordano attended some of those meetings. Padilla and Saravia testified that at one of the Friday meetings Giordano made blatant threats of warehouse closure and job losses if the employees selected the Union. Anez testified at length about one of the Friday meetings at which Giordano spoke, but Anez did not mention any statement that Giordano may have made about closing the warehouse. Giordano, Reardon, and Strong denied that Giordano ever made any such threat.

Padilla further testified that, at a subsequent employee meeting that was held by Giordano, all seats were taken by other employees. He, Anez, and Saravia stood together behind Giordano. During the meeting, Giordano held up an authorization card and said that the employees should not give their addresses and telephone numbers to other employees because they would only be bothered by those who were coming to homes to solicit for the Union. Further, according to Padilla, "When he said that, he turned and he looked at us." There was no denial of this testimony.

The Suspensions

Alleged discriminatee Saravia testified that on August 16, at the start of his shift, Supervisors Strong and Reid took him to Reardon's office where alleged discriminatees Anez and Padilla were already waiting. Reardon told the three alleged discriminatees that he had received a telephone call from Social Security, that their social security numbers did not match their names, and that they must turn in the badges that they had theretofore used to clock in each day. Saravia told Reardon that it could not be possible that the names and numbers did not match, that he did not accept Reardon's statement about a telephone call, and that he needed to see something in writing from Social Security. Reardon responded that the employees could "go and argue about it with human resources." A guard then escorted the alleged discriminatees outside of the warehouse. In

[4] Actually, Anez first answered that is real name was "Edgar Alice" (or something that sounded like "Alice," but which was definitely not "Anez").

[5] At trial, Anez refused to give his true social security number, and the Respondent moves to strike all of his testimony because of that refusal. As I find herein that the Respondent had freely allowed, if not encouraged, its employees to submit false social security information, Anez' true social security number (if any) is ultimately irrelevant. I therefore deny the Respondent's motion. See the Board's Rules and Regulations, Sec. 102.44(c).

the parking lot, they decided to go back and approach Conforti in human resources.

At the Respondent's human resources office, the employees asked both Giordano and Conforti why they were being suspended. Padilla testified:

> Mr. Giordano began talking to us indicating that a letter had arrived from Social Security saying that we could no longer work there. . . .
>
> We asked him to show us the letter.
>
> [Giordano said,] "Well, I don't really have the letter . . . . Social Security called me and they told me on the phone that you could no longer work because your social security numbers do not match." . . .
>
> So we said, "Well, how could the Social Security be calling on the phone?" . . .
>
> [H]e said, "After 9/11 this country is much more secure, more controlled and unfortunately it's a matter of national security" . . . . They [the Social Security Administration] said that you cannot work." . . .
>
> [H]e told us that we had 45 days to hand over a certification from Social Security. He said, "If you bring me a certified letter from Social Security tomorrow, tomorrow you have your job back."

Anez and Saravia testified consistently with Padilla about the August 16 interview with Giordano and Conforti. Specifically, Anez testified that Giordano told the alleged discriminatees that, "after 9/11, the country was feeling more insecure and it was a matter more of security."

Alleged Telephone Call(s) to Gamez

The complaint alleges that Group Leader Gamez is an agent of the Respondent within Section 2(13) of the Act and that, on August 17, Gamez made a threat to the alleged discriminatees. The General Counsel further argues that the alleged threat contained a binding admission that the alleged discriminatees were discharged because of their union activities. It is undisputed that Gamez is one of several bilingual employees who has served as a translator for the Respondent's supervisors. Gamez, however, did not serve as a translator for any of the communications described herein. (When Gamez and the alleged discriminatees conversed, they did so in Spanish.)

Padilla testified on direct examination that, during the day following the suspensions, he met at Anez' house with Anez, Saravia, and Union Representative Gonzalez. They met outside, and they decided to telephone Gamez. Because a neighbor was making noise by cutting his grass, the four men got into Anez' automobile; Anez used his phone, with the speaker on, to dial Gamez. Padilla spoke to Gamez. According to Padilla:

> I . . . said, "What happened, why did they fire us?"
>
> "Look," he said, "I never thought that you would be mixed up in this thing. Your brother was a good worker. You, too. The union is for lazy people. You've made the Bolivians look bad here. Now the company sees the Bolivians in a bad light."

Padilla further testified that, after he hung up, Anez said that he would call Gamez and ask the same question. Anez dialed a number, and Padilla heard Anez ask for Gamez, but at that point Padilla got out of the automobile because it was hot, so he did not hear any exchange between Gamez and Anez.

On cross-examination, Padilla acknowledged, and the General Counsel stipulated, that the only reference in Padilla's investigatory affidavit about a telephone call is:

> About a week after my suspension, I spoke with my team leader, Rodolfo Gamez, on the telephone and he indicated to me that it was because I had promoted the Union, now the Bolivians were viewed negatively. He said, "The Union is for lazy [sic] and now nobody has any confidence in the Bolivians because they were now held in a dim view by the Company."

When then asked if the telephone call to Gamez had not occurred a week after he was suspended, Padilla replied: "I'm not sure."

Gonzalez and Anez testified in their direct examinations that, on August 16 or 17, at a point when Padilla was still present, in a second telephone call from the automobile, which call was conducted with a speaker facility turned on, Gamez made strong statements that the suspensions had been because of the alleged discriminatees' union activities. On cross-examination, Anez acknowledged that his investigatory affidavit, which was taken by counsel for the General Counsel in October, does not mention the alleged telephone calls to Gamez.

During Saravia's direct examination, the General Counsel did not ask about the telephone conversation with Gamez (even though, of course, that conversation had been made the subject of a separate paragraph of the original complaint). The Respondent, however, raised it during Saravia's cross-examination. Saravia testified that he was present when Padilla and Anez called Gamez and that they had reported to him, immediately after their conversation, that Gamez had stated that the alleged discriminatees had been suspended because of their union activities. When asked when that telephone call was, Saravia testified the he could not remember. Saravia was then asked and he testified:

> Q. Okay. Who was actually on the phone?
>
> A. I just told you, it was Padilla and Hector [Pacheco, a/k/a Edgar Anez] who spoke.
>
> Q. Okay. Were they both on the phone together?
>
> A. No, one by one. Of course, they would have had to have spoken one by one.
>
> Q. Okay. When you say "of course you would have to spoken one by one" that's because just one person can use the phone, correct?
>
> A. Yes.

Saravia further testified on cross-examination that, when the telephone call was made, the three alleged discriminatees were in the yard "leaning on the car."

On redirect examination, Saravia testified that Gonzalez was "there" when Padilla and Anez spoke to Gamez on the telephone (on the date that Saravia could not remember). Also, Saravia changed his testimony that he was leaning against Anez' car when Padilla and Anez spoke to Gamez on the telephone. Saravia then testified that he was inside of Anez' car when Padilla, then Anez, spoke to Gamez. Saravia did not

change his testimony, however, that he learned only from reports of Padilla and Anez what Gamez had supposedly said. (That is, Saravia did not testify that there was a speaker phone on, or that he could otherwise hear Gamez' side of the conversation.) When asked specifically if Gonzalez was present when the call from inside the automobile was made, Saravia replied, "I'm confused between that day and another day when there were other people."

Upon a motion that the Respondent made pursuant to rule 102.118, the General Counsel produced the affidavit that Saravia had executed during the investigation of the charge. The affidavit had been taken in Spanish by the counsel for the General Counsel herself. Because Saravia's affidavit was in Spanish, and because the General Counsel had not provided the Respondent with a translation, I allowed the Respondent to place the affidavit in evidence as an exhibit for which it could seek a translation. On brief, page 9, the Respondent asserts:

> Most importantly, there was no mention of the alleged phone calls in his [Saravia's] sworn affidavit given to Region 1 on October 11, 2004. Moreover, there is nothing in his affidavit about alleged threats [by Giordano] to close the warehouse. [See R. Exh. 1.]

The General Counsel has not moved to strike these assertions as unsupported by the evidence, and I find them to be accurate.

The Alleged Discriminatees' Postsuspension Visits to the Warehouse

Anez testified that, about a week after the suspensions, he returned to get his last paycheck. He was also given a check for vacation pay that was due to him.

Saravia testified that "the following week" he returned to the warehouse to get his last paycheck. He met Giordano who again assured him that he could return to work "when the problem is solved." Saravia showed Giordano what apparently was an annual statement of qualifying earnings from Social Security. Giordano looked at the letter but said that it was "no evidence." Saravia then left.

Padilla testified that on August 15 or 16, he returned to the plant gate and distributed flyers for the Union. Padilla identified a check for vacation pay that the Respondent issued to him on August 26.

Adverse Examinations of Conforti and Giodorno

The General Counsel called Conforti, the Respondent's director of human resources, as an adverse witness. Conforti testified that he did not see the 2003 No-Match letter from the Social Security Administration until shortly before the trial. According to Conforti, the 2003 letter had gone to the Respondent's payroll office and that, although that office reports directly to him, no one in that office transmitted the letter to him. Conforti testified that he did receive the April 22, 2004, No-Match letter and that he showed it to his superior, Richard Portno, vice president of operations. Portno instructed Conforti to issue the above-quoted May letter to all employees who were on the 2004 No-Match list.[6] Conforti acknowledged that no supervisor ever told employees, before August 16, that they might be suspended if they did not have their social security information corrected. Conforti was then asked and he testified:

> Q. Was a decision made at any time about employees that did not respond to the June 16, 2004 deadline?
>
> A. At some point, several weeks probably after this [the June 2 letter], a decision was made that due to the ramifications of having INS or someone else come into the organization and stripping our force in half, that we should probably try to put something in motion, not on a high level but on a low-key level of looking at and letting three or four employees go at a time as we hire new people so that hopefully we could get that number down. . . .
>
> Eventually [the decision would affect] some of them, like I said a little while ago, we would cycle, we would cycle through so [as] not to disrupt the distribution, not to put fear into these people that they were going to be losing their jobs. Because if we did this, once again, in a mass, it could have been catastrophic for the organization.

Conforti testified that by "cycled through" he meant that employees would be suspended for up to days, "[s]o that hopefully they could clear their issues with their I-9 information and come back to work."[7] Conforti allowed, however, that he was aware that the Social Security Administration was not questioning the employees' status to work in the United States. Conforti agreed that the only employees who were suspended pursuant to the decision that he had described (and whose author he did not name) were Padilla, Anez, and Saravia.

Conforti further acknowledged that his notes indicate that 84 of the listed 85 warehouse employees whose social security numbers are on the 2004 No-Match list submitted new W-4 forms specifying new social security numbers.[8] As well, 16 of the 84 who changed their numbers also changed the names on their W-4 forms. For 12 of those who changed their names (as well as numbers), only the mother's surname was dropped.[9] Alleged discriminatee Padilla was one of those 12 employees.[10] Of the 16 who changed their names, however, four made the changes complete (as well as changing their numbers). Those four were: Nelson Vasques, who became "Victor Quinones"; Oscar Lopez, who became "Jesus Baez"; Cinthya (sic) Varas, who became "Victoria Alcobar"; and alleged discriminatee Edgar Anez who became "Hector Pacheco." (Saravia, whose

[6] Unless otherwise indicated, all subsequent references to a No-Match list are to the list that was included in the 2004 letter from the Social Security Administration.

[7] A period of 45 days, Conforti testified, was selected to be consistent with Employer policy that re-hired employees who have been separated any longer lose all seniority.

[8] The sole exception was one Miguel Cueva who submitted a new W-4 form, but with the same number.

[9] See *Acme Die Casting*, 309 NLRB 1085, 1108 fn. 32 (1992) ("In the Hispanic culture, the family, or father's, surname is place inside, with the mother's name outside.").

[10] "Elio Padilla-Cespedes" became "Elio Padilla," a change that would have confused neither the Respondent nor the Social Security Administration.

social security number had not been on the No-Match list, had no change to make.) Conforti did not question any employee's changes on his or her W-4 form, but he denied that anyone in management suggested to the employees that they fabricate new names or numbers.

On examination by the Respondent, Conforti testified that, during the August 16 interview that he and Giordano conducted with Padilla, Anez, and Saravia:

> [I]t was told to them once again that the reason for the suspension was the fact that they didn't have proper I-9 information. And Dick [Giordano] had mentioned to them at least twice if not three times that they were valued employees, they were all good workers, and that he was hoping that they would be able to come up with the right paperwork to come back. And Dick reiterated what we were doing for alien cards that were expiring.

Conforti further testified that, in the past, employees whose resident-alien cards are set to expire within 30 days are suspended for 45 days "hoping that they can come up with the proper A card and reinstate them."

The General Counsel also called Giordano as an adverse witness. Giordano testified that, as director of logistics, he has "the fiscal responsibility for both distribution and transportation." When asked what responsibility he had in regard to personnel, Giordano answered: "To the extent that if someone is going to be suspended, terminated, I would know about it." Giordano testified that he never saw the first three pages of the No-Match letter, but, at some point in time between April and August that he could not remember, at a meeting that included Conforti, Portno showed him the single page that contained the 2004 No-Match list. The three men discussed the fact that some warehouse employees "did not have proper paperwork." Giordano testified that Portno instructed Conforti to send letters to the employees to get them to go to the Social Security Administration. Giordano flatly denied that Portno instructed him to do anything about the No-Match list at that time. When asked if Portno ever instructed him to do anything about the employees on the list, Giordano replied that "[h]e did so after I had told Mr. Reardon to suspend 3 people who did not have correct paperwork." Giordano testified that he told Reardon to suspend Padilla, Anez, and Saravia on August 16. Giordano was asked and he testified:

> Q. Now, can you tell me, at any time did you make a decision to investigate a number of employees' social security numbers in 2004?
>
> A. We knew that we had a lot of people that looked like they had problems with their social security number. As a matter of fact, it could have been as large as half the population, okay? . . . With that concern of ours, if we ever had to let go all of these people at one time through a suspension, we would be at a loss to get merchandise to the stores.

Giordano testified that it was he, alone, who selected Padilla, Anez, and Saravia for suspension, and that he did so by "random picking." When asked how he did so, Giordano replied that he chose the alleged discriminatees from a list of nine employees, a copy of which was received in evidence as General Counsel's Exhibit 9.[11] Giordano was asked and he testified:

> Q. How did you pick Mr. Pacheco, Mr. Saravia and Mr. Padilla out of the list that's Exhibit 9, this list of names, to be the first individuals to be suspended?
>
> A. I'm not sure I can answer that. I don't know. I think I mentioned that to you before also. It was just, they were there. I can't say it any simpler than that. It was just, they were there. I can't say it any clearer than that. I wish that I could, but I can't.
>
> JUDGE EVANS: How was General Counsel's 9 created? [It is] just a list of names and some other indications such as dates [of absences].[12] Do you know who created this list?
>
> THE WITNESS: No, I do not, your Honor.
>
> JUDGE EVANS: Do you know who gave it to you?
>
> THE WITNESS: No, I don't. 5
>
> JUDGE EVANS: Next question.
>
> BY MS. ELZENEINY [for the General Counsel]: Was the list based on some handwritten notes that you had?
>
> A. Not handwritten notes that I had, no, no handwritten notes that anyone had.
>
> Q. Okay. So you have no idea where this list came from?
>
> A. I don't know who generated that list, no, I do not.
>
> JUDGE EVANS: But this is the list from which you picked those three names [for suspensions]?
>
> THE WITNESS: Yes.

Giordano further flatly denied that he consulted with anyone (such as Portno) before he made the decision to suspend Padilla, Anez and Saravia. Giordano testified that he, alone, decided that the suspensions of Padilla, Anez, and Saravia were to be for 45 days; he picked 45 days because that was the usual length of suspensions to return information at the operation. Giordano acknowledged that, although he only selected employees for suspension from the second shift, some employees whose social security numbers were on the No-Match list were on the first and third shifts. Giordano denied that he had ever instructed any supervisors to instruct any employees to report false names or numbers on their W-4 forms.

The Respondent's Evidence

The Respondent called Gamez who testified that he was a "team leader" on the second shift. Gamez testified that he had no prior knowledge that Padilla, Anez, and Saravia were going to be suspended. Alfonso Reid, who is the manager of the second shift told him about the suspensions after the fact. About a week after the suspensions, and not at any time before then,

[11] The Tr. 79, L. 20, is corrected to change "Yogo 1 to 4" to "Jovo Montofur," whose is the first name on the list. In order, the other names on the list (which is untitled) are Juan Tumax, Jose Hurtado, Elio Padilla, Edwin Estrada, Nelson Vaelasquez, Jesus Baez (a/k/a Oscar Lopes, supra), Edgar Anez (a/k/a Hector Pacheco, supra), and Juan Saravia.

[12] Giordano, after first trying evasiveness, acknowledged that, at some point during the investigation of the charges, the Respondent told the Region that absences had had something to do with the suspensions.

Padilla called him at home and stated that he did not understand why he had been suspended. Padilla started talking about the Union, but Gamez testified that he replied to Padilla: "I don't know nothing, and that's it." Gamez flatly denied that he had ever received a telephone call from Anez.

Dawn Strong is an area manager at the Respondent's warehouse. She reports to Reid who reports to Reardon. (Gamez reports directly to Strong.) Strong testified that she attended production meetings that were conducted by Giordano and that she attended "more than one" in which Giordano mentioned the Union. When asked if Giordano made any comments about the warehouse and the Union, Strong replied, "I don't know what you mean." Strong then testified that Giordano told the employees that the warehouse was being expanded, and she denied that Giordano said that the warehouse might close or that employees were going to lose their jobs.

Reardon testified that he attended all of the meetings that were conducted by Giordano. He testified that Giordano stressed that the warehouse was expanding, and Reardon denied that Giordano said anything about the employees losing their jobs. On cross-examination, Reardon testified that the Respondent uses "a lot of bilingual associates" to translate for the supervisors.

Giordano denied stating anything during his talks concerning the Union about the future of the warehouse, other than to tell the employees that the warehouse was being expanded. The Respondent did not ask Giordano or Conforti any questions about the reasons for the suspensions of the alleged discriminatees.

Findings and Conclusions

In order to prove a violation of Section 8(a)(3) and (1), the General Counsel has the initial burden of establishing that the employees' union activity, or other protected activity, was a motivating factor in the employer's adverse personnel decision. See *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *Transportation Management, Inc. v. NLRB*, 462 U.S. 393 (1983). The necessary elements of such a prima facie showing are union activity by the employee or employees, employer knowledge or suspicion of that activity, and antiunion animus on the part of the employer. *Wal-Mart Stores*, 340 NLRB 220, 221 (2003), (citing *Briar Crest Nursing Home*, 333 NLRB 935, 936 (2001)). Once the General Counsel has made an initial showing of discrimination, the burden of persuasion shifts to the employer to prove that it would have taken the same action even if the employee had not engaged in protected activity. *Wright Line*, supra at 1089.

Evidence of unlawful motivation under *Wright Line* may take various forms, the most usual of which are threats, interrogations, instructions not to engage in union activities, or the like. In this case, the General Counsel has alleged two threats as constituting conduct that disclosed unlawful animus. The first is the alleged threat by Giordano to close the warehouse if the employees selected the Union; the second is the alleged statement of Gamez, after the suspensions, that the employees had been suspended because of their union activities.

Alleged Threat by Giordano

Padilla and Saravia, but not Anez, testified that Giordano threatened to close the warehouse if the employees selected the Union as their collective-bargaining representative. The General Counsel did not seek to make an allegation of threat of plant closure, however, until well beyond the 11th hour. That is, although the alleged discriminatees' affidavits had been taken in October 2004, and although the formal complaint had issued on February 28, 2005, it was not until the beginning of the trial on May 2 that counsel for the General Counsel announced that she *then* was seeking from the Regional Director the authority to amend the complaint to include a plant closure allegation. And counsel for the General Counsel did not actually move to include the allegation in the complaint until she rested on May 3 at the end of the day.

I find that the affidavits of none of the three alleged discriminatees included a threat of plant closure. I have found above that Saravia's affidavit includes no mention of a plant closure threat by Giordano. The Respondent did not secure from Padilla or Anez concessions that their affidavits do not mention a threat by Giordano, but from the circumstances it is apparent that those affidavits also do not. If, when they were taken a full 6 months before the hearing, any of the October affidavits had included mention of a threat of warehouse closure by Giordano (or by any other supervisor), the General Counsel would not have had to have been scrambling, even through the second day of trial, to obtain the Regional Director's approval to include the allegation in the complaint. The affidavits of all three alleged discriminatees were taken by counsel for the General Counsel who is obviously a sophisticated labor lawyer. Counsel would have at least asked the alleged discriminatees when first taking the affidavits if any supervisor of the Respondent had ever suggested to them that something bad might happen if the Union were successful in its organizational attempt. The alleged discriminatees must have replied in the negative, or the allegation that Giordano threatened to close the warehouse would have been included in the original complaint.

The Board has held that a threat of plant closure because of union activities is one of the most serious that an employer can make and that such a threat is a per se violation of the Act.[13] If the Board's estimation of the gravity of such a threat has any logical basis whatsoever, it is that the threat would make a profound, and unforgettable, impression on any employee who hears it. I therefore believe that, had the threat actually been made, Padilla and Saravia would have mentioned it in their October affidavits.

Giordano was shown to be a false witness on many accounts, and the Respondent's other witnesses were mostly led to testify that Giordano had not threatened the employees with closure of the warehouse. Nevertheless, the testimony that Giordano made the threat impressed me as just something that Padilla and Saravia came up with at the last minute to supply an element of animus. Their failures to include the threat of warehouse closure in their October affidavits, and the failure of counsel for

[13] *Mid-South Drywall*, 339 NLRB 480 fn. 6 (2003), citing *Avondale Industries*, 329 NLRB 1064, 1093 (1999).

the General Counsel to offer even the slightest hint of a legitimate explanation for so belatedly amending the complaint to include such a serious allegation, impel me to find, as I do, that the threat was not made. I therefore shall recommend dismissal of the (late-amendment) 8(a)(1) allegation of the complaint that the Respondent, by Giordano, threatened the employees with closure of the warehouse if they selected the Union as their collective-bargaining representative.

Alleged Threat by Gamez

Assuming that Gamez is the Respondent's agent for all relevant purposes, I would not credit the testimonies of Gonzalez, Padilla, Anez, and Saravia beyond what Padilla testified to in his affidavit.[14] If Anez and Saravia had experienced a relevant telephone call with Gamez during the day of, or the day after, their suspensions, they assuredly would have mentioned that experience in their investigatory affidavits. Also, if the calls had been made on a speaker-phone, inside the car, as Gonzalez, Padilla, and Anez testified, Padilla would have mentioned that fact in his affidavit, and Saravia would not have testified on cross-examination that the call was made while he, Padilla, and Anez were outside ("leaning on") the car and that, "of course," Padilla and Anez spoke to Gamez "one by one." I further do not credit the testimonies of Gonzalez, Anez, and Padilla that two calls were made to Gamez on the day after (or the day of) the suspensions. If there had been any truth to that testimony, or to Saravia's testimony on cross-examination, Saravia would have remembered that the call (or the calls) happened on the day of, or the day after, his suspension. Moreover, if there had been a call that proximate to the suspensions, Padilla would not have testified in his affidavit to only one telephone call with Gamez and that it had occurred: "[a]bout a week after my suspension." I believe, and find, that there was only one telephone call to Gamez by the alleged discriminatees, that Padilla alone made it, and that Padilla made it (as Gamez testified and as Padilla's affidavit states) 1 week after the suspensions. I further find that Gamez said to Padilla no more than, as Padilla's affidavit states, that he was disappointed in Padilla for adhering to the Union.[15] Of course, such a statement is not reflective of animus which would support a finding of a violation of the Act, even if it had been made by an agent or supervisor of the Respondent.[16] Additionally, having been made 1 week after the suspensions, the statement by Gamez is not probative evidence of any knowledge of the reason for those suspensions. By that point, Padilla had distributed flyers for the Union outside the warehouse gates, and it is equally inferable that Gamez was referring to that activity when he stated that he was disappointed in Padilla.

Moreover, assuming that Gamez somehow expressed an attitude of animus toward the prounion sympathies of the alleged discriminatees, there is no basis for holding that Gamez is an agent of the Respondent within Section 2(13). The only evidence to which the General Counsel refers in support of the agency allegation is that Gamez had sometimes served as a translator for the Respondent's supervisors. On brief, the General Counsel cites no case for the proposition that a translator, solely because he or she is a translator, is an agent for all purposes. The Respondent, however, cites compelling authority to the opposite effect; *to wit*: *Jumbo Produce*, 294 NLRB 998 (1993). In that case, the Board rejected an agency contention where the employee whose status was in dispute had theretofore "acted solely as an interpreter." I reach the same conclusion. Moreover, it is to be noted that several bilingual employees in addition to Gamez have also served as translators for the Respondent. The General Counsel's contention would make each such employee a full-time agent of the Respondent; of course, there is no authority for such a proposition. I shall therefore recommend dismissal of the 8(a)(1) allegation of the complaint that the Respondent, by Gamez, told employees that they had been suspended because of their union activities.

Other Evidence of Animus and 8(a)(3) Violations

The absence of evidence of express threats by the Respondent's supervisors or agents does not end the inquiry about animus under *Wright Line*. The Respondent knew about the organizational attempt at the time of the suspensions (actually discharges, as discussed, infra). In view of that circumstance, and in view of the absolutely false nature of the reasons that have been advanced for the suspensions, I find that the record reflects unlawful animus toward the union activities of the Respondent's employees.

On May 22, 2003, the Social Security Administration sent the Respondent a letter with an attachment that listed 185 social security numbers which did not match the Administration's records. The Respondent ignored the letter.[17] On April 22, 2004, the Social Security Administration sent the Respondent a letter of identical text and with an attachment that included 156 numbers that did not match. 92 of the 156 numbers that were attached to the 2004 letter had also been attached to the 2003 letter. That is, the Respondent allowed 92 employees to continue working with possibly false social security numbers for at least 11 months without doing anything about it.

Conforti acknowledged that, of the 85 warehouse employees whose numbers were on the 2004 No-Match list, 84 changed their W-4 forms to specify a new social security number; and 4 of those 84 also changed their names completely (that is, not by just dropping the second Spanish surname). Except for the alleged discriminatees, the Respondent accepted those changes without comment.

Changing one's social security number is not an easy, or a quick, thing to do; changing one's name is even harder. By receipt of the 88 alterations (84 numbers and 4 names) on the W-4 forms, the Respondent knew that wholesale abuse of the social security system was being practiced by a substantial percentage of its warehouse employees. It moreover is equally

[14] See *Alvin J. Bart & Co.*, 236 NLRB 242 (1978).

[15] I find that Padilla's testimony on affidavit that Gamez "indicated" that he had been suspended because of union activities was Padilla's expression of his impression but not testimony of what Gamez had actually said.

[16] See *Raysel-IDE*, 284 NLRB 879 (1987), citing *Fibracan Corp.*, 259 NLRB 161, 171–172 (1981).

[17] I do not believe Conforti's (hearsay) testimony that someone in the payroll office had mislaid the 2003 letter when it was received.

obvious that, until the advent of the Union, the Respondent was determined to do nothing about that abuse.

By its inaction on the 2003 No-Match letter, the Respondent implicitly demonstrated that it had no intention of enforcing the social security laws against its employees. And the Respondent's June 2 letter made the express, plainest-of-terms, boldfaced type, statement that:

> We have no plans to terminate any individual because of this issue. This is between you and the Social Security Administration.

Nevertheless, Respondent suspended two employees whose social security numbers were on the 2004 No-Match list (Padilla and Anez), and it suspended one employee whose number was not on the list (Saravia). The issue before the Board is: why? Assuming the truth of Conforti's testimony that only a payroll clerk received the 2003 No-Match letter, neither Conforti nor Giordano offered any reason for abandoning the Respondent's June 2 (express, boldfaced) assurance that it was not going to take it upon itself to enforce the social security laws—other than to testify, incredibly, that the Respondent selected three employees for suspension in order to avoid losing even a greater number of employees in a hypothetical future raid by the immigration authorities.

Giordano testified the he, and he alone, made the selections of Padilla, Anez, and Saravia for suspension.[18] The Respondent did not question Giordano about how he came to make his selections. When the General Counsel examined Giordano, he testified that Portno showed him the No-Match list that was attached to the 2004 Social Security Administration letter but that Portno did not show him the No-Match letter itself. Apparently sensing that that testimony was incredible, as it was, Giordano then testified that he chose Padilla, Anez, and Saravia, not from the No-Match list, but from another list which had nine names. When asked where the nine-name list came from, Giordano answered: "I don't know who generated that list, no, I do not." When asked how he selected Padilla, Anez and Saravia from the list-of-unexplained-origin, Giordano replied:

> I'm not sure I can answer that. I don't know. I think I mentioned that to you before also. It was just, they were there. I can't say it any simpler than that. It was just, they were there. I can't say it any clearer than that. I wish that I could, but I can't.

Therefore, the Respondent's defense requires a finding that, only on a basis which Giordano could not explain, from a list whose origin Giordano also could not explain, Giordano just happened to chose for discharge three employees who had been making home visits with the union representative, the alleged discriminatees. This is too much to believe, and I do not.

Giordano did not testify what he told the three alleged discriminatees when they gathered in Conforti's office on August 16. Conforti testified that Giordano told the alleged discriminatees that "the reason for the suspension was the fact that they didn't have proper I-9 information." Therefore, even according to the Respondent's version of events, the defense for the suspension allegations has shifted from lack if I-9 information (Conforti) to honest "random picking" from a list of unexplained origin (Giordano).[19] At trial, Giordano and Conforti did not assert that the tragedies of September 11, 2001, were part of the reason for the suspensions, but Padilla and Anez were credible in their testimonies that on August 16 Giordano advanced that reason also. The propounding of these shifting, cynical, and false reasons for the suspensions lead me to find, as I do, that the real reason lay in animus toward the union activities of its employees. See *Montgomery Ward & Co.*, 316 NLRB 1248, 1253 (1995), enfd. 125 F.3d 1064 (7th Cir. 1997), where it is stated:

> Finally, the Board has inferred knowledge where the reason given for the discipline is so baseless, unreasonable, or contrived as to itself raise a presumption of wrongful motive. *Whitesville Mill Service Co.*, supra [307 NLRB 937 (1992)]; *De Jana Industries*, 305 NLRB [845] at 849 [(1991)]; *Shattuck Denn Mining Corp. v. NLRB*, 362 F.2d 466, 470 (9th Cir. 1966). Even where the employer's rationale is not patently contrived, the Board has held that the "weakness of an employer's reasons for adverse personnel action can be a factor raising a suspicion of unlawful motivation." See generally *General Films*, 307 NLRB 465, 468 (1992).

See also *Cox Communications*, 343 NLRB No. 26 (2004), and cases cited therein (finding of "knowingly false" reason for discharge "supports an inference that [the alleged discriminatee's] discharge was motivated by his union activity").

Also the disproportionate number of union adherents selected for the suspensions (3 out of 3 on the No-Match list of 156, or 3 out of 3 on Giordano's from-the-ethers list of 9) also proves the element of animus that is required by *Wright Line*. See *Glenn's Trucking*, 332 NLRB 880 (2000), enfd. 298 F.3d 502 (6th Cir. 2002) (such "blatant disparity" is "statistical evidence" of animus). See also *San Angelo Packing Co.*, 163 NLRB 842, 846 (1967), and *Continental Radiator Corp.*, 283 NLRB 234, 248 (1987).

I further find that the Respondent knew, or at lest suspected, that Padilla, Anez, and Saravia were engaged in union activities. I credit Padilla's undenied testimony that during an anti-union meeting Giordano turned and looked at the alleged discriminatees when he stated that some employees were visiting other employees at their homes to solicit union authorization cards. This is what the alleged discriminatees had been doing, and by the motion of his body Giordano was letting them, and everyone else present, know that he knew it.

When the Respondent issued the last paychecks for the alleged discriminatees, it also issued to them any vacation pay that accrued to that point. The Respondent would not have done that unless the suspensions were actually discharges, and I find that they were.

[18] I do not believe that testimony. I believe that Portno (or someone above Portno) made the decision. For the sake of analysis, however, I shall accept Giordano's testimony in this regard.

[19] The Respondent does not contend that all six of the other employees on the list-of-nine had invalid I-9 information.

In summary, I find that the General Counsel has made out a prima facie case that Padilla, Anez, and Saravia were unlawfully suspended and discharged. Further, because the Respondent's purported rationale for discharging all three employees is not supported by any probative evidence,[20] I find that the Respondent failed to establish that it would have discharged the alleged discriminatees even in the absence of their known union activities. *NLRB v. Transportation Management Corp.*, supra. Accordingly, I find and conclude that the Respondent violated Section 8(a)(3) and (1) by suspending and discharging Padilla, Anez, and Saravia.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I conclude that it should be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act, including offering reinstatement to Padilla, Anez, and Saravia and make them whole for any loss of earnings and other benefits in accordance with the provisions of *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[21]

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[22]

ORDER

The Respondent, Ocean State Jobbers, Inc., d/b/a Ocean State Job Lot, North Kingston, Rhode Island, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Suspending or discharging employees, or otherwise discriminating against employees, because they have engaged in activities on behalf of, or because they have held sympathies for, United Food and Commercial Workers International Union, Local 328, AFL–CIO.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Elio Padilla, Edgar Anez, and Juan Saravia full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Elio Padilla, Edgar Anez, and Juan Saravia whole for any loss of earnings or other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful suspensions and discharges, and within 3 days thereafter notify Elio Padilla, Edgar Anez, and Juan Saravia in writing that this has been done and that the suspensions and discharges will not be used against them in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post in conspicuous places at its facility in North Kingston, Rhode Island, copies of the attached notice marked "Appendix."[23] Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 16, 2004.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

The allegations of unfair labor practices not found are dismissed.

Dated, Washington, D.C. August 30, 2005

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

[20] The Respondent was offering no probative evidence in Giordano's double-hearsay testimony that "it could have been John Card" who determined, after the suspensions had been imposed, that Saravia's I-9 information was not valid.

[21] See, however, *Tuv Taam Corp.*, 340 NLRB 756 (2003) ("Typically, an individual's immigration status is irrelevant to a respondent's unfair labor practice liability under the Act. Questions concerning the employee's status and its effect on the remedy are left for determination at the compliance stage of a case.").

[22] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[23] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT suspend or discharge you, or otherwise discriminate against you, because of your membership in, sympathies for, or activities on behalf of United Food and Commercial Workers International Union, Local 328, AFL–CIO.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed to you by federal law.

WE WILL, within 14 days of the Board's Order, offer Elio Padilla, Edgar Anez, and Juan Saravia immediate reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Elio Padilla, Edgar Anez, and Juan Saravia whole for any loss of earnings or other benefits resulting from our discrimination against them, less any net interim earnings, plus interest.

WE WILL, within 14 days of the Board's Order, remove from our files any reference to the August 16, 2004 suspensions and discharges of Elio Padilla, Edgar Anez, and Juan Saravia, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the suspensions and discharges will not be used against them in any way.

OCEAN STATE JOBBERS, INC., D/B/A OCEAN STATE JOB LOT